

**OPINION
50-100**

April 15, 1950 (OPINION)

LABOR

RE: Railroad Crew

I am in receipt of your letter of April 10, 1950, requesting an interpretation of section 49-1313, N.D.R.C., 1943, which reads as follows:

"No railroad corporation doing business in this state shall operate or permit to be operated on or over any of its main track any self-propelled crane, pile driver, weed-burner, or other self-propelled engine or machine not used for the transportation of passengers and freight or property for hire which has sufficient power to draw or propel itself and one or more standard railroad cars, unless such engine or machine shall be manned by a full crew of competent employees consisting of not less than one conductor or pilot and one person qualified to do flagging duties as provided by law."

You state that train Number 140 makes a run to Streeter from Fargo and returns the same day. You say the conductor's home terminal is Fargo. You do not describe the motive power of this train, but I assume it is a regular engine used for hauling freight and passenger cars.

You then state, "By returning to Dilworth is it permissible for the engineer to go by himself on the main line in yard limits, when he is the operator, can he do both in safety, or does it require a qualified flagman in addition to the engineer." By this, I assume that you want to know whether the engineer may take the engine of train Number 140 back to Dilworth to tie up without any crew except himself aboard.

Before answering your question, I must point out that most of this run is in the state of Minnesota, where the North Dakota statutes do not control, and on this part of the run you should consult with the Minnesota authorities.

I must also point out that it is the opinion of this office that section 49-1313, supra, does not apply to a self-propelled vehicle on the rails which is used for the transportation of "passengers and freight or property." In other words, an engine which is used to haul freight or passenger cars does not come within section 49-1313.

The section which covers your case is section 49-1310, N.D.R.C. 1943, and provides that:

"No railroad corporation doing business in this state which operates more than four trains in any twenty-four consecutive hours shall operate over any of its lines or any part thereof outside of the yard limits any freight or mixed trains consisting of less than forty freight or other cars, exclusive

of caboose and engine, with less than a full train crew consisting of five persons:

1. One conductor;
2. One engineer;
3. One fireman;
4. One brakeman; and
5. One flagman, such flagman to have at least one year's experience in train service.

If a light engine is used, it may be manned by a crew consisting of not less than one conductor, one engineer, and one fireman."

A reading of section 49-1310, supra, specifically that portion which deals with "light engines," reveals that a crew of three is required-an engineer, a fireman, and a conductor.

It is our opinion, therefore, that as regards that portion of the run which takes place in North Dakota the engineer may not handle the engine alone. He must be assisted by a fireman and a conductor as provided in section 49-1310.

WALLACE E. WARNER

Attorney General